

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

To:

see form PCT/ISA/220

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY
(PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/IB2004/002597

International filing date (day/month/year)
11.08.2004

Priority date (day/month/year)
11.08.2003

International Patent Classification (IPC) or both national classification and IPC
B65D85/10, B65D75/36

Applicant
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1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☒ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

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WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITYInternational application No.
PCT/IB2004/002597**10/567741**

Box No. I Basis of the opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
☐ a sequence listing
☐ table(s) related to the sequence listing
 - b. format of material:
☐ in written format
☐ in computer readable form
 - c. time of filing/furnishing:
☐ contained in the international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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Box No. II Priority

1. ☒ The following document has not been furnished:

☒ copy of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(a)).

☐ translation of the earlier application whose priority has been claimed (Rule 43*bis*.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. ☐ It has not been possible to consider the validity of the priority claim because a copy of the priority document was not available to the ISA at the time that the search was conducted (Rule 17.1). This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

4. Additional observations, if necessary:

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Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
- ☒ claims Nos. 19-28, 31, 32

because:

- ☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):
- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- ☒ no international search report has been established for the whole application or for said claims Nos. 19-28, 31, 32
- ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
 - the written form ☐ has not been furnished
 - ☐ does not comply with the standard
 - the computer readable form ☐ has not been furnished
 - ☐ does not comply with the standard
- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
- ☐ See separate sheet for further details

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Box No. IV Lack of unity of invention

1. ☒ In response to the invitation (Form PCT/ISA/206) to pay additional fees, the applicant has:
- ☐ paid additional fees.
 - ☐ paid additional fees under protest.
 - ☒ not paid additional fees.
2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose not to invite the applicant to pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rule 13.1, 13.2 and 13.3 is
- ☐ complied with
 - ☒ not complied with for the following reasons:
see separate sheet
4. Consequently, this report has been established in respect of the following parts of the international application:
- ☐ all parts.
 - ☒ the parts relating to claims Nos. 1,2-18,29,30

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1,29
Inventive step (IS)	Yes: Claims	
	No: Claims	2-18,30
Industrial applicability (IA)	Yes: Claims	1-18,29-30
	No: Claims	

2. Citations and explanations

see separate sheet

Re Item IV.

The separate inventions of inventions are:

Claims 1,2-18,29,30: Blister pack for containing an array of smoking articles

Claims 19,20-28,31,32: Blister pack with foldable sub-trays

They are not so linked as to form a single general inventive concept (Rule 13.1 PCT) for the following reasons:

The features specifically common to independent claims 1 and 19 are a package comprising a tray having a plurality of trough formations, each trough formation being shaped to accommodate at least one smoking article, with adjacent trough formations being spaced apart from one another by planar lands to which a peelable or rupturable backing film is laminated so as to define a plurality of individually sealed compartments. These features are known from the prior art, as disclosed by document DE-U-8407868 and thus cannot be considered as special technical features.

Since the features of independent claims 17 and 29 relate to the same problem as that solved by independent claim 1, the aforementioned claims 17 and 29 as well as their dependent claims have been grouped together with the first invention.

The two inventions solve two different problems by means of different potentially special technical features.

The problem to be solved by the first invention (claims 1,2-18,29,30) is to provide a safe packing of a plurality of smoking articles in the trough formations. The feature which solves this problem is the specific shape of the trough formations accommodating a multi-layer arrangement of smoking articles.

The problem to be solved by the second invention (claims 19,20-28,31,32) is to reduce the packing space of a blister pack having a plurality of trough formations. The feature which solves this problem is the provision of folding lines between each trough formation allowing the sub-trays to be inwardly folded into a mutually nested position to define a cylindrical

package.

Since the problems to be solved by the two inventions and the potentially special technical features which solve these problems are different, the different technical features cannot be considered to be corresponding special technical features as required by Rule 13.2 PCT.

Re Item V.

- 1 The following documents are referred to in this communication:
 - D1 : DE 84 07 868 U (HOECHST AG) 30 May 1984 (1984-05-30)
 - D2 : US 3 967 730 A (DRISCOLL FRANK E ET AL) 6 July 1976 (1976-07-06)
 - D3 : US 4 958 731 A (CALCERANO VICTOR A) 25 September 1990 (1990-09-25)
 - D4 : US-A-3 910 410 (SHAW FRED B) 7 October 1975 (1975-10-07)
 - D5 : US-A-3 121 492 (DE PAUL RICHARD E ET AL) 18 February 1964 (1964-02-18)
- 2 The claims lack clarity (Article 6 PCT).
 - 2.1 Although claims 1, 17 and 29 have been drafted as separate independent claims, they appear to relate effectively to the same subject-matter and to differ from each other only with regard to the definition of the subject-matter for which protection is sought. The aforementioned claims therefore lack conciseness and as such do not meet the requirements of Article 6 PCT.
 - 2.2 The terms "components" and "planar substrates" used in claim 3 respectively claim 12 have not been previously defined in the claims, thereby leaving the reader in doubt as to the technical features to which they refer.
 - 2.3 Claim 14 should refer only to claim 13, wherein the elongate concave recesses are firstly defined.
 - 2.4 The term "decrease" used in claim 30 should be replaced by the term "increase", since it defines an embodiment which has no support in the description.

3 The subject-matter of independent claims 1 and 29 is not new in the sense of Article 33(2) PCT.

3.1 Document D1 discloses (see page 3, line 1 - page 6, line 9; fig.1-4) a blister pack comprising a first blister tray formed with a plurality of trough formations (1) in parallel, side-by-side relationship, each trough formation being shaped to accommodate smoking articles, with adjacent trough formations being spaced apart from one another by planar lands to which a peelable or rupturable backing film (2) is laminated so as to define a plurality of individually sealed compartments, with each smoking article being individually accessible by rupturing or peeling away that portion of the backing film covering it.

Document D1 does not disclose explicitly that an array of two to ten smoking articles can be accommodated in each of the trough formations. However, the trough formations of D1 are in a form in which they are in fact suitable for that stated use, and thus, D1 deprives claim 1 of novelty.

3.2 Document D2 discloses (see column 1, line 57 - column 2, line 37; fig.1-5) a smoking article package (10) comprising a self supporting tray (12) formed of a thermoplastic material defining an elongate trough formation containing an array of between two and ten smoking articles, said trough formation being contiguous with and surrounded by a planar land (13), and a peelable or rupturable backing film (11) laminated to said planar land so as to encapsulate said array of smoking articles in said trough formation, said array of smoking articles being accessible by rupturing or peeling away the backing film from the tray. Thus, all the features of claim 29 are anticipated by D2.

4 The subject matter of independent claim 17 does not involve an inventive step in the sense of Article 33(3)PCT.

4.1 Document D2 discloses a blister pack from which the subject-matter of claim 17 differs only in that the array of smoking articles being arranged in at least two layers, with the number of smoking articles in each layer progressively decreasing by one.

4.2 The problem to be solved may therefore be regarded as to propose a blister pack for accommodating at least three articles in a compact way.

4.3 However, the solution proposed in claim 17 has already been employed for the same purpose in a similar blister pack, see document D3 (claim 1; fig. 1, 3). It would be obvious to the person skilled in the art, namely when the same result is to be achieved, to apply these features with corresponding effect to a blister pack according to document D2, thereby arriving at a blister pack according to claim 17. The proposed solution in independent claim 17 thus cannot be considered inventive.

5 Dependent claims 2-16, 18 and 30 do not appear to contain any additional features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT with respect to novelty and inventive step, the reasons being as follows:

The additional features defined in these claims are either known from the available prior art or they are considered as being within the scope of the customary practice followed by persons skilled in the art, especially as the advantages thus achieved can be readily contemplated in advance, see for instance D1 for claims 2-4, 8 and 15; D2 for claims 5, 6, 13 and 14; D4 (see abstract, fig. 4) for claim 7; D5 (see column 1, line 63 - column 2, line 56; fig. 1-4) for claims 9-12; D3 for claims 16, 18 and 30.

6 Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the documents D1 to D3 is not mentioned in the description, nor are these documents identified therein.

7 Independent claim 17 is not in the two-part form in accordance with Rule 6.3(b) PCT, which in the present case would be appropriate, with those features known in combination from the prior art (document D2) being placed in the preamble (Rule 6.3(b)(I) PCT) and with the remaining features being included in the characterising part (Rule 6.3(b)(ii) PCT).

8 The features of the claims are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).

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- 9 The vague and imprecise two last paragraphs of the description on pages 15 and 16 imply that the subject-matter for which protection is sought may be different to that defined by the claims, thereby resulting in lack of clarity (Article 6 PCT) when used to interpret them.